

IN THE FIGURES:

Please amend Figure 3b per the attached Replacement Sheet.

REMARKS

In response to the final Official Action of November 7, 2007 and in response to the Advisory Action of January 25, 2008, claims 1, 13, 16-19, 22 and 29 have been amended, claims 14 and 15 have been cancelled and claims 34-36 newly presented.

Newly submitted claims 34, 35 and 36 correspond to amended claim 16 in the following manner: claim 34 is a method corresponding to claim 16, but written from the perspective of a mobile station; claim 35 is a new apparatus claim corresponding to amended method claim 16; and claim 36 is an apparatus claim corresponding to new method claim 34. No new matter is added.

In response to the Advisory Action, claims 34 and 36 are now believed to have all of the limitations to make these claims allowable (*cf* allowed claim 16). Claims 34 and 36 make clear that the recited measurement results are suited to enable said mobile communication network to estimate a link quality of said point-to-multipoint channel while transmitting multicast data on said point-to-point channel to said mobile station and that the receiving an order from said mobile communication network to switch from said point-to-point channel to said point-to-multipoint channel for receiving multicast data occurs when said mobile communication network determined that said estimated link quality of said point-to-multipoint channel reaches a required link quality.

Minor amendment has been made to the specification at page 4, lines 15-20 in order to make clear that the region identified by the letter B in Figure 3b is a region where both p-t-m and p-t-p services are possible and that in region A outside of region B, only p-t-p services are possible. Minor correction is made to Figure 3b as set forth in the enclosed replacement sheet. No new matter is added since it is clear from the specification, including page 14, line 30 through page 15, line 6 that due to a drop of the link quality in a p-t-m channel, a switch from a p-t-m transmission to a p-t-p transmission can be required. As specifically stated at page 15, lines 1-4, the area A of Figure 3b outside of area B requires a switch from a p-t-m transmission to a p-t-p transmission due to a drop of the link quality in the channel. The amendment to Figure 3b as set forth in the attached Replacement Sheet corresponds the figure to the description at page 14, line 30 through page 15, line 6. No new matter is added.

Amendment has also been made to claim 1 to point out that the mobile station sends out a request to the mobile communication network. This amendment thereby thus conforms method claim 1 with apparatus claim 10.

Claim Rejections - 35 USC §112

At section 2, claims 13 and 22 are rejected under 35 USC §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is asserted that claims 13 and 22 are directed to a computer readable medium, but that the specification lacks antecedent basis for a computer readable medium.

The Office notes that pages 6-8 of the application as originally filed teaches a software program and software code. It is asserted by the Office that the specification does not define a computer readable medium and that the metes and bound of the claim cannot be assessed. However, with reference to Figure 4 of the application as originally filed, various components of a mobile station (420) are shown, including a p-t-m to p-t-p processing portion (423) and a p-t-p to p-t-m processing portion (424). In addition, at page 14, lines 5-22, these components are described. At page 14, lines 17-20, it is specifically stated that it is understood that mobile station (420) comprises additional components as known from the art which are not depicted in Figure 4.

It is therefore readily apparent that such software code is stored in the device. In view of the specific recitation in the specification as filed that the software code is stored in a software program product (see, for example, specification at page 6, lines 17-22), claims 13 and 22 have been so amended and are therefore believed to be definite.

In the Advisory Action, the Office asserts that a "software program" is non-statutory. However, what applicant is claiming in amended claims 13 and 22 is defined in the specification; namely, a "software program product" which is specifically recited as storing software code and that it is this software code that a processing component of the mobile device runs for realizing the actions set forth in claim 1 (with regard to claim 13) and claim 17 (with regard to claim 22). Therefore, applicant believes that the claim is statutory and is not directed to a software program *per se*, but rather a software program product which stores software code which when executed by a processing

component performs the recited actions. The claim is therefore believed to be statutory under 35 USC §101.

Claim Rejections - 35 USC §102

At section 4, claims 14, 15, 19-22, 25¹ and 29 are rejected under 35 USC §102(e) as being anticipated by US patent application publication 2003/0220119, Terry. Claims 14 and 15 are cancelled and therefore the rejection of these claims is moot.

With respect to claim 19, this claim has been amended so as to recite apparatus elements conforming to the actions recited in method claim 17. At section 8 (page 7) of the final Official Action, claim 17 is indicated as allowable if rewritten in independent form, including all of the limitations of the base claim and any intervening claims (which has been done, see below). Consequently, claim 19, as amended, is believed to be allowable in view of the allowability of claim 17.

Claim 20 is therefore allowable in view of its dependency from amended claim 19 and claim 21 is allowable in view of its dependency from claim 20.

Claim 22 has been amended to depend from claim 17 which, as indicated above, is indicated as allowable. Consequently, claim 22 is believed to be allowable.

Claim 25 depends from amended claim 19 and is therefore believed to be allowable.

Claim 29 has been amended in a manner similar to claim 19 and thus incorporates features corresponding to those of allowable claim 17. As such, claim 29 is also believed to be allowable.

Claim Rejections - 35 USC §103

At section 6, claims 18 and 33 are rejected under 35 USC §103 as being unpatentable over Terry. Claim 18 is believed to be allowable since it has been amended to depend from claim 17 which, as indicated above, is indicated as allowable.

¹ Although the Office does not include claim 25 in the list of rejected claims at section 4, the Office does in fact reject claim 25 at page 4, lines 17-19.

Similarly, claim 33 is believed to be allowable due to its dependency from amended claim 19.

Allowable Subject Matter

At section 8, claims 16 and 17 are indicated as allowable if rewritten in independent form, including all of the limitations of the base claim and any intervening claims. Claims 16 and 17 have been so amended and are therefore believed to be allowable.

Please note that claim 16 as amended recites the allowable method from the perspective of the mobile communication network; that is, the mobile communication network requests and receives from a mobile station measurement results for link quality related measurements on a point-to-point channel which point-to-point channel is currently used by said network for transmitting multicast data to said mobile station, the mobile communication network estimating a link quality of a point-to-multipoint while transmitting multicast data on a point-to-point channel to said mobile station, wherein said mobile communication network estimates said link quality of said point-to-multipoint channel based on said measurement results of said point-to-point channel, and in case said estimated link quality of said point-to-multipoint channel reaches a required quality, the mobile communication network ordering said mobile station to switch from said point-to-point channel to said point-to-multipoint channel for receiving said multicast data.

Newly submitted claim 34 presents a corresponding method from the perspective of the mobile station performing particular actions. As such, claim 34 is believed to be allowable in view of the noted indication of allowability of claim 16 as set forth at section 8 of the Official Action.

Newly submitted apparatus claim 35 corresponds to amended method claim 16 and is consequently believed to be allowable in view of the indication at section 8 of the final Official Action concerning allowability of claim 16.

Similar argument pertains to newly submitted apparatus claim 36 which corresponds to newly submitted method claim 34.

Applicant further notes that at section 7 of the final Official Action, claims 1-9, 10-12, 23, 24, 26-28 and 30-32 are allowed.

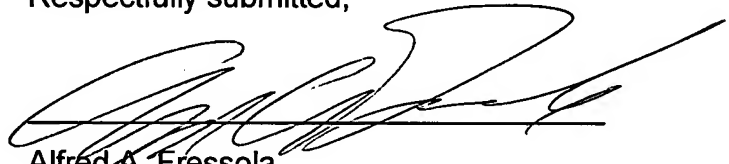
Furthermore, the present amendment is not believed to raise any new issues since the amendments are for purposes of cancelling rejected claims and amending other rejected claims so as to depend from allowable claims or have features corresponding to allowable claims. The newly submitted claims are believed not to raise new issues for the reasons presented above concerning the noted allowability of amended claim 16.

The amendment of claims 13 and 22 in response to the rejection of said claims under 35 USC §112, does not raise new issues since the amendment conforms to the specification as originally filed.

In view of the foregoing, it is respectfully submitted that the present application as amended is in condition for allowance and such action is earnestly solicited.

Respectfully submitted,

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